FEB 6 1956
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955.

No. ~~669~~

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

*Petitioner,*

*v.*

WILBUR C. KING, *et al.*, as members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

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ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
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WILBUR C. KING, *et al.*, as members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,
Respondents.

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.*

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Florida entered in this case on October 11, 1955.

### The Opinion Below.

No opinion was written by the Supreme Court of Florida. Its judgment to which this petition is directed is appended at page 13. The judgment quashed a petition for writ of certiorari presented to that Court by this petitioner praying the Florida Court to review an order of the Florida Railroad and Public Utilities Commission, and the judgment dis-

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* Containing 12 pages, with an Appendix of 20 pages.

missed the proceeding in response to motions which submitted that our petition for certiorari "was prematurely filed" and that the order sought to be reviewed "does not possess the element of finality which is a prerequisite to judicial review".

The order of the Florida Commission is appended below at pages 14 to 27 on which latter page appears the mandate of the order by which petitioner is aggrieved.

## Jurisdiction.

The jurisdiction of this Court is invoked under 28 U. S. Code, Sec. 1257(3), this petition presenting a right and immunity, which was specially set up and claimed before the Florida Commission as well as in the Supreme Court of Florida and is relied on here, under Article VI of the Constitution of the United States, the Fourteenth Amendment of the Constitution of the United States, and a decision of the United States (then) Circuit Court of Appeals for the Fifth Circuit in *City of St. Petersburg* v. *Atlantic Coast Line Railroad Company,* 132 F. 2d 675 (1943). The opinion in that case is appended at page 28.

The judgment of the Florida Supreme Court was entered October 11, 1955 (R. 1474; p. 13 *infra*). Rehearing was denied without opinion November 18, 1955. (R. 1483; p. 33 *infra.*)

## Question Presented.

1. May a Supreme Court of a state properly permit an administrative agency of the state to render an order, compliance with which will result in the destruction of private property without compensation, particularly when the United States Court of Appeals for the Circuit in which the property lies has said no?

## Statutory and Constitutional Provisions Involved.

28 U. S. Code, Sec. 1257(3):

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> . . .
>
> (3) By writ of certiorari, where the validity of a treaty or statute of United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Constitution, Article III, Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . .".

Constitution, Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment XIV, Section 1:

> "... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ...".

## Statement of the Case.

The Florida Railroad and Public Utilities Commission entered an order on June 30, 1955 (R. 9; appended at pp. 14-27), which, so far as material here ordered Petitioner

> (1) "... to *remove* its St. Petersburg, Florida, freight and passenger depots from their present locations in said city and
>
> "[2] to *construct* and operate *new,* modern and adequate freight and passenger depots, capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by this Commission pursuant to a further hearing to be held herein at a time and place subsequently to be announced by the Commission." (Emphasis added.)

Those two requirements are independent, and separable, as the order as a whole will also show; for the order finds that each of the depots and its related tracks are situated with respect to adjacent and intersecting city streets so that train movements serving the depots unreasonably interfere with vehicular traffic on such streets; that for the same reasons the depots are not reasonably accessible to persons desiring and entitled to use them; that the "locations" of the depots and their associated

tracks greatly retard the City's growth and expansion and depreciate the value of property in the vicinity of the depots and tracks; and orders that both depots "shall be relocated".

Each of the depots is of the type, design and construction (of brick, concrete, metal and wood) usually found in a city of 125,000 population. The ordered removal of the depots will result in their destruction. For that destruction, no provision is made by the Florida Commission's order or otherwise for compensation to petitioner.

In previous litigation, in the years 1936-1943, between the City of St. Petersburg and petitioner, the United States (then) Circuit Court of Appeals for the Fifth Circuit held, in *City of St. Petersburg* v. *Atlantic C. L. R. Co.*, 132 F. 2d 675, with respect to both depots and their associated and related tracks, that

> (1) "... destruction of the railroad properties so placed on that property may not be accomplished except by condemnation or other legal proceedings which allow just compensation for their taking."

and

(2) The City, for reasons given by the Court, was estopped to attempt destruction of those railroad properties.

Petition for rehearing was filed before the Florida Commission pursuant to its pertinent rule, and was denied. The Commission's rules make no provision for the filing of a second petition for rehearing. The Commission did not reserve jurisdiction to further consider the removal of the depots and the administrative process respecting such removal is at an end. The Florida Commission will hold a further hearing with respect, and only with respect, to the locations, design and costs of the depots.

Pursuing the method prescribed in the Florida practice for judicial review of final orders of the Florida Commission, petitioner applied to the Supreme Court of Florida for a writ of certiorari. The Florida Commission and the City of St. Petersburg separately filed identic motions to quash such petition and to dismiss the proceedings (R., pp. 1465 and 1469) and on October 11, 1955 the Florida Supreme Court granted the motions, quashed the petition for writ of certiorari and dismissed the proceedings. Petition for rehearing was seasonably filed (R. 1476) and was denied November 18, 1955 (R. 1483).

## Presentation of Question Below.

The question submitted to this Court was presented to the Florida Railroad and Public Utilities Commission during the taking of testimony by it on three separate occasions:

(1) On cross examination of a witness for the City, he was asked by petitioner's counsel: ". . . Are you familiar at all with the case of the City of St. Petersburg *v.* Atlantic Coast Line that was decided January 7, 1943 and reported in 132 F. 2d 675 . . .?" (R. 310).

(2) In argument of an objection made by counsel for the City respecting two City ordinances considered in the cited case, counsel for petitioner, quoting from the opinion, stated the holding of the case with respect to the necessity of compensating petitioner, before "destruction of the railroad properties so placed on that property", the sites of the depots and tracks (R. 1024, 1025).

(3) In argument of an objection by the City's counsel, in which reference was made to petitioner's "counsel's repeated references to the case of City of

St. Petersburg *v.* Atlantic Coast Line Railroad Company, 132 F. 2d 675" (R. 1238, 1240).

The question was presented to the Supreme Court of Florida in Coast Line's petition for certiorari (R. 5) by paragraphs 3, 4, and 5, which read:

> "3. The destruction of the Petitioner's railroad properties which would result from the removal of the depots may not be accomplished except by condemnation or other legal proceedings which allow just compensation for their taking.
>
> "4. The Commission erred in failing to find that the City was estopped to urge the removal of either of the depots for the reasons stated in the case of *City of St. Petersburg* v. *Atlantic Coast Line Railroad Company,* 132 F. 2d 675, decided by the United States Court of Appeals for the Fifth Circuit on January 7, 1943.
>
> "5. The order of removal contravenes the Fourteenth Amendment of the Constitution of the United States, the Twelfth Section of the Declaration of Rights and Article XVI, Section 2 of the Constitution of the State of Florida, in that it takes the private property of the Petitioner without just compensation and deprives the Petitioner of its property without due process of law."

## Reasons for Granting the Writ.

The following holding of *Matlow* v. *Missouri,* 295 U. S. 97, 98 (1935) seems to support the propriety of this application:

> "In view of the contention that the State Court had denied effect to a judgment of the United States District Court . . . writs of certiorari were granted".

The Supreme Court of Florida, by its refusal to entertain petitioner's petition for certiorari presented to that Court, has left in force and effect an order of the Florida Railroad and Public Utilities Commission which ignores and directly conflicts with the judgment and opinion of the then United States Circuit Court of Appeals for the Fifth Circuit in the case of *City of St. Petersburg* v. *Atlantic C. L. R. Co.*, 132 F. 2d 675. The order cannot be obeyed without denying effect to that judgment and opinion.

The Florida Commission's order is definitive and final so far as the removal and inevitable concomitant destruction of the depots is concerned. That aspect of the order is subject "to no further review or correction in any other state tribunal". *Market Street R. Co.* v. *Railroad Comm. of California*, 324 U. S. 548, 551 (1945). The Florida Commission has reserved no jurisdiction with respect to the removal of the depots which it has ordered. The administrative process before the Commission in all aspects relating to or concerning removal of the depots is at an end; that portion of the order requiring the removal of the depots is now as final as it will be after the Commission holds its "further hearing" to consider the location and characteristics of the new depots.

There is no connection between the provisions of the order requiring removal of the depots and the provisions of the order relating to the new depots. The direction to "construct" new depots is entirely apart from, and is not a consequence of compliance with, the direction to "remove" the present depots from their present sites. The construction of the new depots is not to wait upon the removal of the old. There is no room for a reasonable supposition that maybe the new depots are not to be constructed until the old are removed or that the land occupied by the present

ones may be needed for those to be constructed. The record as a whole, accurately reflected by the Commission's order (*post*, p. 27), shows beyond all peradventure that the City's purpose, its expressed desire, and the reason for the litigation, is to force petitioner, its depots, tracks and all its railroad facilities out of the down town area of St. Petersburg. The City's petition to the Florida Commission (R. 18) complains throughout of the "location of said depots", and the petition prayed that it be considered as a formal complaint as to the "location" as well as adequacy of the depots. The Commission's order, in accord, finds that both depots "should be relocated" (*post*, p. 27).

Under the Florida law, "valid administrative orders of the railroad commissioners should be obeyed, and those who are subject to such orders violate them at their peril". *State* v. *Florida E. C. Ry. Co.*, 58 Fla. 524, 50 So. 425 (1909). One peril is that a railroad guilty either of a "violation" or of a "disregard" of an order of the Commission is amenable to a penalty of "not more than $5,000". Sec. 350.28, Fla. Stat. 1943.

It does seem, and we submit, that we have here by the Florida Supreme Court one of those orders "which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review . nd too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated". *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 546 (1949); *Stack* v. *Boyle*, 342 U. S. 1 (1951); *Swift & Co.* v. *Compania Caribe*, 339 U. S. 684 (1950); *Roberts* v. *United States District Court*, 339 U. S. 844 (1950). Traditionally this Court has given such situations a "practical rather than a technical construction". *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 546 (1949).

Moreover, this Court applies its own standards as to the characteristic of finality in a judgment of a state court which will justify the entertaining by this Court of an appeal or application for certiorari. "Local rules of practice" do not furnish the test. *Department of Banking* v. *Pink*, 317 U. S. 264, 268 (1942). *Market Street R. Co.* v. *Railroad Comm. of California*, 324 U. S. 548, 551 (1945), where it is said: "The judgment for our purposes is final when the issues are adjudged. Such finality is not deferred by the existence of a latent power in the rendering court to reopen or revise its judgment". The Court said in *Dickenson* v. *Petroleum Conv. Corpn.*, 338 U. S. 507 (1949), that the matter of "the finality of a judgment for purposes of appeal" is "a subject on which the volume of judicial reading already is formidable". But in our case, as in *Dickenson*, the order of the Florida Commission for the removal of the depots and the Florida Supreme Court's refusal to interfere with it, "was not tentative, informal nor incomplete". On the contrary, so far as the removal of the depots is concerned, "the case was concluded and closed" when the Supreme Court of Florida declined to interfere.

*Trustees* v. *Greenough*, 15 Otto 527 (1882), indicates that the order for the removal of the depots is *pro tanto* a final one, possessing, as it does, in that regard the same characteristics of finality as did the judgment for costs out of a fund *in custodia legis* involved in *Greenough*.

Under the doctrine of *Carondolet Canal and Nav. Co.* v. *Louisiana*, 233 U. S. 362, 371 (1914) (where the judgment appealed from was reviewed by this Court, though it left for later determination the title to a parcel of land not appurtenant to the larger property disposed of by the judgment, and left also for later determination the matter

of an accounting), the judgment of the Florida Supreme Court, so far as it affects removal of the depots "has a substantial finality" as well as formal finality; for the questions reserved by the Florida Commission's order, viz., the location, design and cost of new depots, are the only questions to which "the further proceedings are directed to apply"; and there is "distinct and explicit finality" to the mandate that the existing depots be removed.

*Hill* v. *Chicago and E. R. Co.*, 140 U. S. 52, 54 (1891), would seem to justify the issuance of the writ, inasmuch as the adjudication requiring removal of Coast Line's depots is "a severable matter from the other subjects of controversy, and did not affect their determination. . . All the merits of controversy [here, respecting the removal of the depots]... were disposed of, and could not be again reopened, except on appeal..."— which appeal the Supreme Court of Florida has refused to entertain. As the opinion in *Hill* also says: "The decree of June 8, 1885 was appealable as to the matters it fully determined; so also was the decree of July 14, 1887 as to the severable matter which it involved".

## Conclusion.

A national court having held in *City of St. Petersburg* v. *Atlantic C. L. R. Co.*, 132 F. 2d 675 (1943), that the destruction of the depots and their tracks may not be accomplished except by condemnation or other legal proceedings which allow just compensation for their taking; and the order of the Florida Commission plainly providing for such destruction without any compensation; and the Supreme Court of Florida declining to interfere because forsooth in its view the Florida Commission's order is not final under

the Florida practice: it is suggested that this Court well might say now instead of later that it will not permit a judgment and opinion of a court of the nation to be so ignored.

Respectfully submitted,

Charles Cook Howell,
Baya M. Harrison, Jr.,
Phil C. Beverly,
Attorneys for Petitioner.

## Judgment of Florida Supreme Court.

IN THE

SUPREME COURT OF FLORIDA,

JUNE TERM, A. D. 1955.

Tuesday, October 11, 1955

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Petitioner,

*vs.*

WILBUR C. KING, Chairman, and JERRY W. CARTER, and ALAN S. BOYD, Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,
Respondents.

The City of St. Petersburg and Wilbur C. King, Chairman, and Jerry W. Carter and Alan S. Boyd, Members of the Florida Railroad and Public Utilities Commission, Respondents, have filed motions to quash the Petition for Certiorari filed in this cause on August 26th, 1955, and to dismiss the proceedings and upon consideration thereof, it is ordered that said motions be and the same are hereby granted and said Petition for Writ of Certiorari is hereby quashed and proceedings dismissed.

## Order of Florida Commission.

BEFORE THE

FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION.

| | |
|---|---|
| City of St. Petersburg, Florida, a Municipal Corporation, Petitioner, *vs.* Atlantic Coast Line Railroad Company, a corporation, Respondent. | Docket No. 4063-RR. Order No. 2199. |

Chairman Wilbur C. King, Commissioner Jerry W. Carter, and Commissioner Richard A. Mack each participated in the hearings and disposition of this cause.

ORDER OF THE COMMISSION.

This matter came on to be considered by the Commission as the result of a formal petition by the City of St. Petersburg, Florida, a municipal corporation, for relocation of the St. Petersburg freight and passenger depots of the Atlantic Coast Line Railroad Company.

The city's petition was filed with the Commission on April 7, 1954 and in substance alleged that the St. Petersburg passenger station of the Atlantic Coast Line Railroad is old, unsightly, obsolete, poorly arranged and no longer adequate from the standpoint of the convenience and necessities of the traveling public; that the passenger station situated only one block south of Central Avenue, which is the main thoroughfare of St. Petersburg, has become the source of

serious traffic congestion in downtown St. Petersburg; that the congested conditions in the vicinity of the passenger station resulting from its location in the heart of the city's business section, and the inadequate parking facilities provided for those having business with the railroad, have conspired to make the railroad's passenger station grossly inaccessible for the traveling public and others having legitimate business on the station premises; that the frequent movement of trains to and from the passenger station across heavily traveled streets in the main business section of the city causes serious traffic congestion, prevents the free flow of traffic, subjects the public to undue hazards, and constitutes a serious and continuing threat to the public safety and welfare of the city, its inhabitants and visitors by impeding the free and effective movement of fire, police and ambulance traffic; that the railroad's freight station, also in the heart of St. Petersburg's business district, is inadequate in size, location and accessibility and constitutes a menace to the public safety and welfare; that said freight station because of its location and arrangement constantly causes serious traffic congestion on heavily traveled public streets in the vicinity of said station; and that said passenger and freight depots should be relocated to sites not inimical to the public welfare and safety and in keeping with the public convenience and necessity.

Under its rules of practice the Commission served a copy of the city's petition on the respondent railroad and directed it to satisfy the complaint or plead thereto within fifteen days from the date of such notice.

Before the respondent railroad filed its response to the city's petition, the city filed a petition to take deposition by written and oral interrogatories. By this petition the city sought authority to take the deposition of the Atlantic Coast Line Railroad before a notary public in Wilmington, N. C., where the home office of respondent railroad is located. The petition averred that the deposition would be taken for the purpose of eliciting evidence material and relevant to the issues in this proceeding. Ninety-seven

written interrogatories were proposed in the petition and authority was sought to propound oral interrogatories in addition thereto.

Subsequent to the filing of the foregoing pleadings the railroad filed a motion to strike an allegation of paragraph 11 of the city's petition for relocation of the depots and also filed its answer to said petition. The City then filed a motion for more definite statement relating to the allegations of the Railroad's answer as to jurisdiction of the Commission and filed a motion to strike portions of the answer.

The Commission served notice on the Railroad of the petition to take deposition and directed it to show cause on June 1, 1954, at the Commission Offices in Tallahassee, Florida, why the Commission should not enter an order authorizing the taking of such deposition. Notice was also served on the parties to this proceeding of hearing on June 1 before the Commission at Tallahassee, Florida on the motions of both parties to strike and the City's motion for more definite statement. The Railroad then filed a motion to quash the notice and order of the Commission on the petition for deposition and the Commission notified the parties that such motion would also be heard on June 1. The railroad then filed a motion for continuance of the June 1 hearing and the Commission notified the parties that it would on June 1 hear oral argument on the railroad's motion for continuance and all other pending motions then filed or which might be filed prior to the time of hearing. Subsequent to this notice, the Railroad filed a motion to quash and objections to the petition to take deposition by oral and written interrogatories.

After due consideration of the pending pleadings the Commission denied the city's motion for a more definite statement, its motion to strike portions of respondent's answer, and the railroad's motion to strike portions of the city's petition for relocation of respondent's freight and passenger stations. At the same time the Commission designated one of its members to hold a pre-hearing confer-

ence in St. Petersburg for the purpose of determining which of the proposed interrogatories should be answered by respondent and directed that said commissioner hold a hearing thereafter in Wilmington, N. C., for the purpose of receiving the railroad's answers to those interrogatories which might be approved by the Commission.

On July 8, 1954 the Commissioner designated for that purpose held the pre-hearing conference as directed for the purpose of determining which of the city's interrogatories should be answered. At said conference the respondent railroad objected to answering any of said interrogatories. Thereupon the petitioner discussed the individual questions by groups. The first group of questions related to the adequacy of the present stations. The second group related to the cost of the present operations of the Railroad Company in comparison to the cost of operation in the event the freight and passenger stations were relocated. The third group of questions related to the location of the present stations as they affect traffic in and about said stations and their effect upon the growth of St. Petersburg's downtown business district. The last group of questions related to the convenience of the public. After the petitioner had advanced various reasons why the railroad should be required to answer the individual questions in each category, the Respondent raised specific objections to each individual question in each classification.

The parties supported their respective positions by the expert testimony of well-qualified engineers.

After having heard argument concerning the various interrogatories and being fully advised of the vast scope of the various questions involved, it was the opinion of the Commissioner designated to hold said prehearing conference that the interrogatories at that present time were premature and that the City of St. Petersburg should be required first to submit evidence at a public hearing in support of its petition for relocation of the freight and passenger stations of Atlantic Coast Line Railroad Company at St. Petersburg, Florida.

The full commission concurred in the findings and opinion of the Commissioner who held the conference and entered a formal order setting the matter down for a public hearing on the city's petition for relocation of respondent's freight and passenger stations. The public hearing was scheduled to be heard in St. Petersburg on October 5, 1954. When said hearing was convened the commission announced that two primary questions were involved, to-wit: (1) Should the present freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg be relocated and replaced at a new location by new, modern and adequate facilities capable of fully meeting the public convenience and necessity, and (2) Where should such new facilities be located. By Order of the commission the October hearing was limited to the first question. At the same time the commission announced that a determination of the second question would be the subject matter of further hearings if the commission should enter an affirmative order concerning the first questions.

Voluminous testimony and exhibits were received at the October hearing from the petitioner. A subsequent hearing was held in December 1954 at which time the respondent railroad presented its testimony and exhibits in support of its opposition to the city's relocation petition. A third hearing was held in March 1955 for the purpose of receiving rebuttal evidence from the petitioner. At the conclusion of this hearing the commission requested the respective parties to file briefs, together with proposed findings of fact and conclusions of law, and announced that it would subsequently set a date for oral argument on the various issues involved.

Before the briefs were filed and oral arguments heard the respondent railroad filed a motion to dismiss the proceeding on the ground that it had been rendered moot by the action of the city in adopting an Ordinance requiring the railroad to elevate its tracks from 16th Street North to Bayshore Drive. The city filed an answer to respondent's motion and the commission advised the parties that oral argument would be heard on the motion on June 8 1955 at

which time oral arguments on the merits of the city's relocation petition would likewise be heard. Briefs were filed on June 6 and oral arguments were heard by the full commission on June 8 as scheduled.

After a careful study and consideration of the entire record herein, and based thereon, the commission makes the following findings of fact:

1. In the year A. D. 1887 or 1888, Orange Belt Company constructed a railroad from Sanford, Florida to St. Petersburg, Florida, and built a depot on the present site of the existing passenger station, at which time St. Petersburg was a village of about 30 inhabitants. The village grew into a City of 7,186 inhabitants by 1915, when the present passenger depot was constructed.

2. The Atlantic Coast Line Railroad tracks enter the City at 40th Avenue North at approximately 35th Street and run in a Southeasterly direction, crossing Central Avenue between 13th and 14th Streets, proceeds one block, then turns Eastward and continues to Tampa Bay. From the point where it intersects the City limit to Tampa Bay, it crosses practically all of the heavily traveled streets and avenues of the City at grade. After crossing 13th Avenue North to the end of the line it traverses the main business district of St. Petersburg. From 7th Street Eastward to 3rd Street, the railroad tracks are in the center of First Avenue South, thereby creating a divided street for the passage of motor vehicles. From 7th Street Westward to Central Avenue and from 3rd Street Eastward to the Bay, the tracks occupy the entire street and the same is not open to vehicular traffic.

3. Central Avenue is the main arterial highway of the City of St. Petersburg running from Tampa Bay on the East to Boca Ciega Bay on the West. The Atlantic Coast Line Railroad depot is situated almost a block south of Central Avenue between 2nd Street and 3rd Street, both of which are heavily traveled streets of the City. The Rail-

road tracks are on the South side of the depot. Both 2nd Street and 3rd Street are paved a width of 60 feet. First Alley South is also paved. There is an open space between the South margin of First Alley South and the North wall of the depot with the exception of a masonry island on the West end of this area used for the discharge of passengers from taxicabs and a grassed lawn surrounded by masonry work on the East end of this area. The entrance to the white waiting room is on the North side of the depot and from the South side of First Alley South to the entrance to the white waiting room is 71 feet 8 inches. First Alley South is 20 feet wide. The block between First Alley South and Central Avenue is designated as Block 32 and is built solid with stores from 2nd Street to 3rd Street, the rear end of which abut on First Alley South. The service entrances of these stores are on First Alley South which is used by commercial vehicles practically all of the time. On the 3rd Street side of the station building spaces are provided for the parking of vehicles along the island. At the West end of the area spaces are marked for the use of taxicabs. Along the North side of the building 17 spaces are provided for the parking of automobiles for the convenience of the public who have business to transact at the railroad station. On the 2nd Street side of the building are 5 or 6 spaces provided for parking automobiles but are used in the main by American Railway Express Company for its trucks. North of the grassed lawn surrounded by masonry work at the East end of the building is situated the office and warehouse of American Railway Express Company. From the North border of this grassed lawn to the South wall of the Railway Company is a distance of 40 feet. Between the grassed lawn and the depot is a driveway 26 feet wide but which is usually blocked with the trucks of the Express Company. The Express Company also has a service station at the East end of the depot. West of this service station is the white waiting room. Immediately West of the white waiting room is the ticket office and station agent's office. West of the ticket office is the colored waiting room. West of the colored waiting room is a covered patio. Immedi-

ately West of the patio is the baggage room and parcel check office. There is a covered walk on the South side of the depot which extends almost but not quite to the railroad tracks. This shelter extends almost the entire distance from 2nd Street to 3rd Street. Under this shelter, in front of the South door to the white waiting room, is a sign directing passengers to board trains East of 2nd Street. The building was erected in 1915. It is far from modern but is large enough in the main to accommodate the normal requirements of the traveling public and others having business at the station, although the waiting rooms are small without sufficient seating capacity for the convenience of the passengers and those who go to the depot to see them aboard and those who go there to meet passengers on incoming trains. The toilet facilities are insufficient and unsanitary.

The baggage room in the station is poorly located and difficult of access. It can be reached by car, truck or taxicab only through an alley 26 feet wide which runs Eastward from 3rd Street. Automobiles are usually parked adjacent to this narrow passage which makes an entrance to the bagbage room by automobiles difficult.

4. To reach the door of the white waiting room by motor car it is necessary to enter the areaway between First Alley South and the depot building either from 2nd Street or 3rd Street and this areaway is invariably congested with motor vehicles, particularly during the arrival and departure of trains. Seldom, if ever, is there one of the parking spaces, provided for the public, vacant for the use of passengers and those who go to the depot to transact business. It is almost impossible to find a vacant parking space within two or three blocks of the passenger depot and large numbers of people who go to the depot to board trains are compelled to double park in either 2nd or 3rd Street because of the congested condition of First Alley South and the small areaway North of the station, unload their baggage and take their motor vehicle two or three blocks to park the same.

5. The railroad yards of the Atlantic Coast Line are situated North of 13th Avenue North and West of 19th Street. All trains are made up for departure in the yards and are backed from the yards to the station across the mostly heavily traveled streets of the City and through the business district. During the winter months a train called the Havana Special arrives in St. Petersburg about 7:50 A. M., unloads at the depot and backs out to the yards. About 9:00 A. M. a train designated as the Champion, consisting of 16 to 18 units, backs from the yards to the depot to be loaded for departure at about 10:30 A. M. This train invariably is placed on the first track South of the depot, that is next to the Station. While this train is waiting for departure time invariably another train of 8 to 10 units, called the Southland, arrives on the tracks next to the train made up for departure, leaving very narrow space between the two trains for the passengers to detrain and for the unloading of baggage. There is no platform for the convenience of the passengers getting off between these two trains but merely an asphalt like substance on the ground. Nor is there any canopy or shelter provided for the convenience of passengers in inclement weather. Passengers alighting from the Southland cannot go directly to the depot, but are compelled to go either West to 3rd Street and around the locomotive, or Eastward to 2nd Street and around the broken end of the train waiting for departure, in order to reach the depot. Not infrequently the passengers are compelled to debouch into the street subjecting them to injury from traveling vehicles.

Passengers leaving on outgoing trains, in obedience to the sign directing them to go East of 2nd Street, cross 2nd Street and proceed toward 1st Street and sometimes cross 1st Street and go almost to Shore Drive, depending upon the particular pullman car to which the passenger is assigned. East of 2nd Street there is no platform provided for the convenience of passengers but only a narrow asphalt like pavement laid flush with the ground which extends only part of the way. There is no shelter or canopy of any kind East of 2nd Street for the protection of the passengers in inclement weather.

After the Southland arrives and the passengers detrain, the Champion departs, traversing the business district and crossing the most heavily traveled streets in the City, bypassing the railroad yards on its way to Jacksonville and points North. When the Southland unloads its baggage, mail and express cars, it backs out to the yards over the same route. About 3:30 in the afternoon the Havana Special backs from the yards over the same route for loading for departure at 7:30 P. M. and soon thereafter the Southland also backs from the yards to the station to be loaded for departure at 6:00 P. M. While the Southland is standing at the station, waiting for the time of departure, invariably the West Coast Champion arrives compelling the passengers to detrain between the Southland and the Champion. After the Champion unloads its mail, baggage, and express cars it backs to the yards and then the Southland departs at approximately 6:00 P. M. About 7:00 P. M. the Havana Special leaves over the same route.

6. All these trains, whether backing to the station for departure or arriving block 3rd Street, 2nd Street, 1st Street and most of the time Shore Drive. Incoming trains usually clear 3rd Street, which they block only long enough for the passage of the train, but by that time the locomotive is down between 1st and 2nd Streets, or between 1st Street and Shore Drive, depending upon the length of the train. In the winter season, trains with 15 or 16 cars entirely block 2nd Street and 1st Street until the passengers are unloaded from the cars, which takes generally from 6 to 10 minutes. During that time the train crew detaches the mail and express cars, pulls them down across 1st Street and back into the stub and track which is on the North side of the main tracks between 1st and 2nd Streets. This switching movement also blocks 1st street for a period of time. The engine then goes back and attaches to the remaining cars parked East of 1st Street, and then returns and connects up with the cars still standing in front of the station. Usually there is a dining car which occupies the second from the end position in the train near 3rd Street.

The entire train is then pulled back down Eastward blocking 1st Street again. The dining car is brought back Westward and attached to the Southland which is ready for departure. Then the whole train is pulled down again blocking 2nd Street for 6 or 7 minutes and then carried to the yard. The whole operation occupies 45 or 60 minutes or more, during which time one or more of the streets mentioned are blocked by train movements. Located as the station is, it is impossible to switch the incoming or outgoing trains without blocking either Shore Drive, 1st, 2nd, or 3rd Streets. In effect the whole area of St. Petersburg from 3rd Street Eastward is used by the Atlantic Coast Line Railroad Company as a train switching yard. On occasion, cars are left blocking the streets for as much as 96 minutes. The blocking occurs because it is impossible to clear the engine on 3rd Street and leave 2nd Street unblocked and sometimes 1st Street. Because 1st Avenue South is not open East of 3rd Street and 2nd and 3rd Streets are blocked by the movement of the trains the vehicular traffic cuts through First Alley South and the area between the margin of First Alley South and the depot, thereby causing terrific traffic congestion in both the alley and in front of the depot; and thus making the depot inaccessible to those desiring to go there to transact business with the railroad company or those who go there to depart on trains or to met passengers arriving on trains.

This blocking of the streets by the switching movements of the train interferes greatly with the flow of vehicular traffic during the busy time of each day.

7. At the time the depot was constructed in 1915 at its present location the City had a population of only 7,186 and there were few automobiles in use. St. Petersburg has grown rapidly and now has a population of approximately 125,000. The increased use of motor vehicles by the local population together with that of the visitors from other states has created a serious traffic problem in the vicinity of the depot and all streets crossed by the rails.

In 1915 when the station was constructed the total number of winter visitors approximated 23,000. In 1954 there

were approximately 534,000 winter visitors. In 1915 approximately 17,000 of them came by train. In 1954 approximately 84,000 of them came by train.

8. The main fire station of the City is located on 3rd Street South one block South of the depot, and it is a frequent occurrence that fire alarms are turned in when the trains block 3rd Street, 2nd Street, 1st Street and Shore Drive, compelling the fire equipment to detour in order to answer the alarm. It frequently happens that the blocking of these streets backs the traffic up beyond Central Avenue to the North and 2nd Avenue to the South and across the intersections thus blocking the East and West flow of traffic on Central Avenue at the intersections.

9. The station located as it is, under the conditions which exist, is insufficient to meet the requirements of the traveling public and does not provide the necessities or convenience which the traveling public requires.

10. In 1904 the City of St. Petersburg vacated that portion of 8th Street South extending from the South margin of First Alley South to the railroad tracks of the Atlantic Coast Line Railroad Company, and conveyed the same to said railroad company for freight depot purposes. The railroad built a freight depot on First Alley South and across the vacated portion of 8th Street just one-half block South of Central Avenue. At that time the City of St. Petersburg had a population under 2500. As the result of the construction of said depot 8th Street South comes to a dead end at the South margin of First Alley South. There is no access to the freight station from the South. It can be reached only by driving off Central Avenue down 8th Street South or by traversing an alley one-half block South of and parallel to Central Avenue. The entrance to the alley is from 7th Street. It is narrow and has commercial cars and trucks parked along the same. 7th Street and Central Avenue are both heavily traveled and it is difficult to turn into the alley to gain access to the freight station. Exit from the alley is possible only by making a complete U turn

at the station and proceeding North on 8th Street to Central Avenue, or by going Westward down the alley into 9th Street. Traffic on both Central Avenue and 9th Street is so heavy it is difficult and often unsafe to leave the alley and merge with the traffic on either Street and is oft-times dangerous.

The switches connecting the main line to the tracks serving this station are on 7th Street South on the East end, and 9th Street South on the West end, so that every train movement has to block either 9th or 7th Street with the possible exception of an engine pulling one car.

As a result of its inaccessibility and the switching movements of the freight trains, the freight depot cannot and does not provide the convenience and necessity required by the city of 125,000 people, which St. Petersburg has grown. The City is still growing rapidly and the condition which exists now will grow tremendously worse as the City continues to grow.

11. An average of 147,845 motor vehicles cross the tracks of the Atlantic Coast Line Railroad Company from and including 13th Avenue North Southeastward and Eastward to the Bay daily. There is an average of 387 daily train movements over these same crossings, causing 4,470 motor vehicles to be delayed at said crossings daily. The total time occupied by trains at these crossings daily are 7 hours and 44 minutes and each crossing, on the average, is occupied by trains 27 minutes and 18 seconds daily. The traffic signals in St. Petersburg are so regulated as to provide the maximum continuous flow of traffic. When the crossings are blocked by trains the flow of traffic is halted causing it to back up several blocks and thereby blocking the traffic on the cross streets.

12. The locations of the freight and passenger depots together with the location of the tracks serving the same greatly retard the expansion of the business district of St. Petersburg and vitally and adversely depreciates the values of property in the proximity of the railroad station and the railroad tracks.

Based upon the record herein, and the laws of Florida applicable thereto, the commission has arrived at and announces the following conclusions of law:

1st. The Atlantic Coast Line Railroad passenger depot is grossly inadequate and incapable of providing the public convenience and necessity required by the traveling public.

2nd. The Atlantic Coast Line Railroad freight depot is grossly inadequate and fails to provide the public convenience and necessity required by those who ship and receive freight through said depot.

3rd. That both the passenger and freight depots should be relocated so as to better serve the inhabitants of the City of St. Petersburg to which said railroad company is tributary.

4th. The motion to dismiss filed by respondent and based upon the City Ordinance requiring elevation of the railroad's tracks should be denied.

NOW, THEREFORE, IN CONSIDERATION THEREOF, it is ORDERED by THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION that the respondent, ATLANTIC COAST LINE RAILROAD COMPANY, be and it is hereby directed to remove its St. Petersburg, Florida, freight and passenger depots from their present locations in said city and to construct and operate new, modern and adequate freight and passenger depots, capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by this Commission pursuant to a further hearing to be held herein at a time and place subsequently to be announced by the Commission.

By Order of the Commission at Tallahassee, Florida this 30th day of June, A. D., 1955.

BOLLING C. STANLY
Executive Secretary

(SEAL)

LWP

## Opinion of Circuit Court of Appeals for the Fifth Circuit.

CITY OF ST. PETERSBURG *v.* ATLANTIC COAST LINE R. CO.

No. 9144.

CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT,

January 7, 1943.

Appeal from the District Court of the United States for the Southern District of Florida; Alexander Akerman, Judge.

Action in ejectment by the City of St. Petersburg against the Atlantic Coast Line Railroad Company. Judgment for defendant, and plaintiff appeals.

Affirmed.

CARROLL R. RUNYON and HARRY I. YOUNG, both of St. Petersburg, Fla., for appellant.

McKINNEY BARTON, of St. Petersburg, Fla., for appellee.

Before SIBLEY, HOLMES, and McCORD, Circuit Judges.

McCORD, Circuit Judge.

The City of St. Petersburg, Florida, brought an action in ejectment to recover the use and possession of a vacated and closed portion of a street which, since the year 1905, has been continuously used and occupied by the Atlantic Coast Line Railroad Company as part of the site of a freight depot. The material facts were stipulated, judgment was entered for the railroad, and the City appealed.

Eighth Street South was and is a public street in the City of St. Petersburg. Reciting as a preamble that the railroad company desired to build a freight depot on Eighth Street, and that the erection of such depot would be for

the benefit of the City, the City Council of the City of St. Petersburg on September 21, 1904, passed Ordinance 73 to vacate and close the portion of Eighth Street involved in this action, and to convey the property to the railroad for use as a freight depot. By Ordinance 88, approved February 24, 1905, the City further authorized the railroad to occupy the vacated portion of Eighth Street described in Ordinance 73, "for the purpose of constructing and maintaining a freight depot thereon". By warranty deed dated December 3, 1904, the railroad acquired from the owner title to lots 75 and 76 of Ward and Baum's addition to St. Petersburg, which lots abutted the vacated and closed portion of Eighth Street.

Shortly after the passage of Ordinance 88, the railroad erected a new passenger station at the site of its combined freight and passenger depot, and began the construction of a new, wooden freight depot extending across Eighth Street and occupying that portion of the street which had been vacated and closed by the City. The freight depot was completed in October, 1905. In 1913 the railroad began construction of a brick freight depot upon the same property, and at that time nearby property owners sought to enjoin the City from permitting and the railroad from constructing the depot. The railroad company defended the action alone, and on demurrer the bill for injunction was dismissed by the trial court. On appeal, the judgment was affirmed. *Bozeman* v. *City of St. Petersburg, et al.*, 74 Fla. 336, 76 So. 894. More than twenty years thereafter, and on August 20, 1935, the City Council passed Ordinance 824-A, repealing Ordinances 73 and 88, and authorizing the proper City officers "to take such necessary steps to effect the opening of such portions of Eighth Street as are now closed and obstructed as particularly described in this Ordinance for the use by the public for the purpose of public travel". Thereafter the present action was instituted in the State Court, and then removed to the Federal Court.

Appellant contends: (1) That the City had no legislative authority to pass Ordinances 73 and 88; (2) that if the City did have authority to vacate and close the street, the

authority was improperly exercised "for the benefit of a private corporation"—an action "not sanctioned at law"; and (3) that the action of the City was, at most, a grant to a private corporation of a right or franchise in the street, "which said franchise is revocable when the said street becomes necessary for the benefit of the public welfare of said City".

[1, 2] It is stipulated that at the time of the passage of the questioned ordinances there was applicable to the City of St. Petersburg a statute of the State of Florida which became effective in 1887, and which provided that city councils "shall have power to regulate, improve, alter, extend and open streets". Fla. C. G. L. 1927, Sec. 2953 (1843). There was also in force Sec. 680 of the Revised Statutes of the State of Florida of 1892, which was effective on June 14, 1892, and which provided that a "city or town council shall have power and authority to alter * * * or discontinue any park, street, avenue, alley, highway or any other way which has heretofore been laid out, fixed or established". The latter statute clearly provides that streets "heretofore * * * laid out" may be discontinued. The contention that Eighth Street had not been therefore laid out, fixed, or established, is foreclosed by Paragraph 20 of the Stipulation of Facts which unequivocally states that Eighth Street, "embracing the property in litigation herein had been laid out, fixed and established prior to June 14, 1892", and remained as such was laid out, fixed and established until the passage of Ordinances 73 and 88. Appellants say, however, that construction of Sec. 680 should be made only after consideration of a prior statute, Sec. 2 of Chapter 3164 of the Florida Laws of 1879, and that the words "heretofore been laid out" should be limited to mean laid out and established prior to the passage of the original act of 1879. There is no necessity for referring to the old act. The Revised Statutes of 1892 were passed pursuant to Chapter 4055 of the Florida Acts of 1891, which provided that all statutes and parts of statutes not included in the revised statutes were repealed. Sec. 680 is plain and unambiguous on its

face, and there is no occasion to resort to the prior statute to raise and resolve a doubt that does not exist. The City had statutory authority to alter, vacate, or discontinue the street. 59 C. J., p. 1098, Sec. 648; Florida Cent. & P. R. Co. *v.* Ocala St. & S. R. Co., 39 Fla. 306, 22 So. 692; Florida East Coast Ry. Co. *v.* Worley, 49 Fla. 297, 38 So. 618, 623.

[3] Appellant's contention that the vacation of Eighth Street was for the benefit of a private corporation, and therefore unauthorized and void, overlooks the fact that the Atlantic Coast Line Railroad Company is a public utility corporation; and that, as the first ordinance recites, the erection of the new freight depot on Eighth Street was for the benefit of the City and its inhabitants. Under the provisions of Section 17, Chapter 5361, Acts of Florida of 1903, the City Council had authority "to grant by lease for a term of years easements or fee simple titles to public utility corporations any public properties". The railroad company accepted the benefit of the ordinances and lived up to its obligations, and built a new passenger depot at the old location and a new freight depot at the agreed location on Eighth Street. It cannot be doubted that development of the freight and passenger transportation facilities to and from St. Petersburg played no small part in the progress and development of the City through the past thirty-five years. The case at bar does not fall within the rule prohibiting cities from vacating public properties, which they hold in trust, for the private use of individuals and corporations. McQuillin, Municipal Corporations, 2d Ed., Vol. 4, Par. 1520, p. 265, *et seq.* Cf. Lutterloh *v.* Town of Cedar Keys, 15 Fla. 306; Florida Cent. & P. R. Co. *v.* Ocala St. & S. R. Co., 39 Fla. 306, 22 So. 692; Roney Investment Co. *v.* City of Miami Beach, 127 Fla. 773, 174 So. 26.

[4] As to appellant's third contention, we think it clear that a re-establishment of the vacated portion of Eighth Street may not be accomplished by simply passing an ordinance repealing Ordinances 73 and 88 which have been relied upon through the years. These ordinances were

accepted and large amounts of money expended to accomplish the necessary improvements, and destruction of the railroad properties so placed on that property may not be accomplished, except by condemnation or other legal proceedings which allow just compensation for their taking. Atlantic Coast Line R. Co. *v.* Duval County, 114 Fla. 254, 154 So. 331; Atchison, T. & S. F. R. Co *v.* City of Shawnee, 8 Cir., 183 F. 85; Grand Trunk Western R. Co. *v.* City of Flint, D. C., 55 F. 2d 384; City of Flint *v.* Grand Trunk Western R. Co., 5 Cir., 69 F. 2d 604.

[5] These propositions aside, however, we think that under the undisputed facts in this case it would be manifestly inequitable and altogether unjust for appellant to prevail in this action. For more than thirty years all parties in interest relied and acted upon the ordinances passed by the City Council in 1905. The contested portion of Eighth Street was vacated; at great cost new depots were erected and switching facilities were constructed. These improvements did not enure alone to the benefit of the railroad, the City of St. Petersburg and its citizens were benefited by such improvements throughout all these years. At this late day the City should not, and may not, be heard to complain. McQuillin, Municipal Corporations, 2 Ed., Vol. 4, Par. 1515, p. 251; City of St. Petersburg *v.* Meloche, 92 Fla. 770, 110 So. 341; Twenty-Third St. R. Corp. *v.* City of Miami Beach, 140 Fla. 257, 191 So. 464, 469; Florida East Coast R. Co. *v.* City of Miami, 76 Fla. 277, 79 So. 682, 686, 1 A. L. R. 303.

The judgment is affirmed.

## Order Denying Rehearing.

IN THE

SUPREME COURT OF FLORIDA

JUNE TERM, A. D. 1955.

Friday, November 18, 1955

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,
Petitioner,
*vs.*
WILBUR C. KING, Chairman, and JERRY W. CARTER, and ALAN S. BOYD, Members, of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,
Respondents.

Petitioner has filed a petition for rehearing in this cause and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

The Petitioner in said petition prayed in the alternative staying further proceedings in the cause by the Respondents so that Petitioner may apply for and obtain, if it can, a Writ of Certiorari from the Supreme Court of the United States and upon consideration thereof, it is ordered that further proceedings in this cause be and are hereby stayed for ninety days from this date to enable the Petitioner to have a reasonable time in which to apply for and to obtain, if it can, a Writ of Certiorari to the Supreme Court of the United States. This order is subject to cancellation at any time if the Appellant fails to prosecute certiorari proceedings with reasonable dispatch.

Office - Supreme Court, U. S.
FILED
FEB 23 1956
HAROLD B. WILLEY, Clerk

# Supreme Court of the United States

OCTOBER TERM, 1955.

## No. 669.

ATLANTIC COAST LINE RAILROAD COMPANY,
a Corporation, *Petitioner*,

vs.

WILBUR C. KING *et al.*, As Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, *Respondents*.

**BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

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# Supreme Court of the United States

OCTOBER TERM, 1955.

## No. 669.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, *Petitioner*,

vs.

WILBUR C. KING *et al.*, As Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, *Respondents*.

**BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

### OPINIONS BELOW.

Arranged in proper sequence, the orders provoking the present petition for writ of certiorari are as follows:

1. Order of the Florida Railroad and Public Utilities Commission, dated June 30, 1955 (Appendix A).

2. Order of the Supreme Court of Florida, dated October 11, 1955, granting separate motions of the Respondents to quash a petition for certiorari to review the above order of the Commission and dismissing the proceedings (Appendix C).

3. Order of the Supreme Court of Florida, dated November 18, 1955, denying petition for rehearing (Appendix D).

And although the Commission order contains a review of the case, findings of fact, conclusions of law to the effect that the existing freight and passenger depots of Petitioner are not adequate to serve the public convenience and necessity, and directs Petitioner to remove the stations from their present locations and to construct and operate new, modern and adequate facilities at such locations in the city consistent with the public interest, safety and welfare as may be determined by the Commission pursuant to a further hearing, neither its order nor those of the Supreme Court of Florida was accompanied by written opinion.

## JURISDICTION.

The Supreme Court of Florida specifically decided that the Commission order of June 30, 1955, was not a final order and for that reason, and without any attempt to pass upon the merits of the controversy, quashed the petition for review and dismissed the proceedings. Its own order hence was not a final judgment within the meaning of 28 U. S. Code, Sec. 1257(3), and any consideration of the supposed grounds under which Petitioner invokes the jurisdiction of this Court becomes unnecessary.

## QUESTION PRESENTED.

The question posed by Petitioner is constructed upon the erroneous theory that (1) the Commission order will result in the destruction of private property without compensation, (2) that it is in defiance of a former judgment of the United States Court of Appeals for the Fifth Circuit, and (3) that the Supreme Court of Florida has affirmed the action of the Commission. The first and second of these assumptions relate to the merits of the controversy and at this stage of the case are premature. The third assumption is contradicted by the record which affirmatively shows that the Supreme Court of Florida, being of the opinion that the order of the Commission is purely interlocutory in character, refused to consider the case on the merits until the administrative process comes to its end, neither affirming nor reversing, but merely dismissing for want of a final appealable order. The actual problem with which this Court is confronted may be stated as follows:

> Where a public service commission separates the issues in a depot removal case, trying first the question of adequacy and reserving for later consideration the site, plans and economic factors involved in the erection of such new depots as the Commission may find necessary in the public interest, and where the Supreme Court of the State, upon appeal from an order finding the existing depots inadequate and directing their removal to such location as may be determined upon a trial of the reserved issue, decides that the order so rendered is interlocutory in character and ought not to be reviewed on its merits until the administrative process is finally ended, is the judgment of the State Supreme Court final within the meaning of 28 U. S. C. A., Sec. 1257(3)?

## STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED.

No useful purpose can be served by speculating in respect to what statutory and constitutional provisions may eventually engage the attention of this Court after the Railroad Commission of Florida completes the case and the Supreme Court of Florida reviews its final action. At this particular time the only question is whether the order of the Florida Supreme Court is a final judgment. If this Court should decide that it is, the Federal questions can be explored in detail in briefs on the merits, otherwise any immediate discussion of them would amount only to an exercise in hypotheticals.

## STATEMENT OF THE CASE.

On April 7, 1954, the City filed its petition with the Commission alleging in substance that the existing depots of the Railroad in St. Petersburg were inadequate and praying that they be relocated at new sites in keeping with the public interest. In due course the Railroad answered, denying the material averments of the complaint, challenging the jurisdiction of the Commission and asserting other reasons for dismissal of the proceeding.

Before Respondent filed its response to the petition, the City sought leave to take the Railroad's deposition by oral and written interrogatories, a substantial portion of the latter relating to a comparison of operating costs as between the existing depot locations and such new sites as might eventually be selected. The Railroad objected to answering any of these questions and after several hearings the Commission ultimately decided to postpone a decision on the matter until the City first demonstrated that the present stations were in fact in-

adequate. A public hearing for this purpose was scheduled for hearing at St. Petersburg on October 5, 1955, and when it convened the Commission announced that two primary questions were involved, to-wit: (1) Should the present freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg be relocated and replaced at a new location by new, modern and adequate facilities capable of fully meeting the public convenience and necessity, and (2) Where should such new facilities be located. By order of the Commission the October hearing was limited to the first question. At the same time the Commission announced that a determination of the second question would be the subject matter of further hearings if the Commission should enter an affirmative order concerning the first question.

In the course of the October and subsequent adjourned hearings the parties offered voluminous testimony and exhibits to sustain their respective contentions on the question of adequacy, following which the Commission heard oral argument, considered written briefs, and, on June 30, 1955, entered its order in which after an extensive review of the entire case, including elaborate findings of fact, the Railroad was directed to remove its freight and passenger depots from their present locations in St. Petersburg and to construct and operate new, modern and adequate freight and passenger depots capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by the Commission pursuant to a further hearing to be held at a time and place subsequently to be announced by the Commission.*

*Each of the foregoing steps is recited in the Commission's Order, See Appendix A.

A petition for rehearing having been made and denied, the Commission set the case for public hearing at 9:30 A. M., October 4, 1955, in the City Commission Hearing Room, St. Petersburg, Florida, for the purpose of receiving evidence from the parties in connection with the determination of the location of the new freight and passenger stations. Prior to the latter date the Railroad filed in the Supreme Court of Florida its petition for certiorari to review the Commission order of June 30, 1955, whereupon the hearing set for October 4, 1955, was cancelled.

In the Supreme Court of Florida the City and the Commission filed identical motions to quash (Appendix B) the petition for certiorari and to dismiss the appellate proceedings on the grounds that (1) the petition had been prematurely filed, and (2) the challenged order did not possess that element of finality which is a prerequisite to judicial review. The Supreme Court of Florida heard oral argument on these motions, received written briefs and on October 11, 1955 (Appendix C), granted the motions. A petition for rehearing was denied (Appendix D) November 18, 1955, and the present petition has followed.

## REASONS FOR DENYING THE WRIT.

As a general rule, the courts do not review determinations or decisions of an administrative body which are not or have not become final. *Federal Power Commission* v. *Metropolitan Edison Company*, 304 U. S. 375, 58 S. Ct. 963, 82 L. Ed. 1408, 1414; *Myers* v. *Bethlehem Shipbldg. Corp.*, 202 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638, 644. They interfere with such a board neither at an intermediate point in its procedure, nor to overthrow a

mere preliminary, procedural, interim or interlocutory order, even though in a particular case time and expense might be saved by permitting direct review of an interlocutory order instead of requiring the case to proceed to final decision. *Aluminum Co. of America* v. *Federal Power Commission*, 130 F. 2d 445, 76 U. S. App. D. C. 182. Administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process. *Chicago & S. Air Lines* v. *Waterman S. S. Corp.*, 333 U. S. 103, 68 S. Ct. 431, 92 L. Ed. 568; *United States* v. *Los Angeles & S. L. R. Co.*, 273 U. S. 299, 47 S. Ct. 413, 71 L. Ed. 651; *United States* v. *Illinois C. R. Co.*, 244 U. S. 82, 37 S. Ct. 584, 61 L. Ed. 1007; *Rochester Teleph. Corp.* v. *United States*, 307 U. S. 125, 59 S. Ct. 754, 83 L. Ed. 1147, 1151.

The foregoing principles are of particular importance in Florida, for in this State Section 5 of Article V of the State Constitution confers jurisdiction upon the Supreme Court to review an order of the Railroad and Public Utilities Commission through common law writ of certiorari, and through that method alone. And since common law writs of certiorari are appropriate only for the purpose of reviewing *final judgments or orders*, the Supreme Court was under especial obligation to examine the record in this case with caution in order to determine whether the challenged order marked the end of the controversy, administratively speaking, or merely a milepost along the way. *Atlantic Coast Line R. Co.* v. *Carter*, 66 So. 2d (Fla.) 430; *Atlantic Coast Line R. Co.* v. *Railroad Commission*, 149 Fla. 245, 5 So. 2d 708; *Florida Motor Lines, Inc.*, v. *Railroad Commissioners*, 100 Fla. 538, 129 So. 876. In discharging the duty imposed upon it by the Constitution, the Supreme Court of Florida ad-

judged the order under attack to be interlocutory in character, affording no basis for judicial interference, at least not until the administrative process reached its final end. This conclusion is inescapable, otherwise the Court would have accepted jurisdiction, heard the case on the merits and either approved the action of the Commission by affirmance or disapproved by reversal. It did neither and the result is that the case returns to the Commission for completion, after which, and this Respondents freely concede, Petitioner will be entitled to review in the Supreme Court of Florida every ruling of the Commission from beginning to end which it may regard as prejudicial. And in the event of an adverse decision at the hands of the State Supreme Court, Petitioner, this time armed with the final judgment now so sadly lacking, may apply anew to this Court for the identical relief which it now prematurely demands. It necessarily follows that the only prejudice which Petitioner has thus far encountered consists of a mandate to finish the case before the Commission. This amounts neither to a final judgment nor the denial of any right guaranteed by the Federal Constitution.

The reasons which must have induced the Supreme Court of Florida to decide as it did are easy to understand and clearly correct. It had before it a case in which, like any other involving relocation of railroad depots, the Commission was initially confronted with the question of whether the existing stations were adequate. If it found that they were not, the further duty arose of considering a new site, plans, specification and cost, including the task of deciding whether the expense to the carrier would be so unreasonably out of proportion to the convenience afforded the public as to impose an unlawful burden. The Court undoubtedly recognized the tremendous importance

of this second step, because years before in *State ex rel. Railroad Com'rs* v. *Florida East Coast Railway Co.*, 67 Fla. 83, 64 So. 441, it had expressly held:

> "A proper test is not whether the facilities required by the order are in fact necessary, but whether they are reasonable for the convenience and safety of the public to be served, and the expense to the carrier is not so unreasonably aut of proportion to the convenience afforded to the public as to impose an unlawful burden upon the carrier. No question of confiscation is involved."

The Court was further advised by the record, briefs and argument that although the Commission conceivably could have resolved all the issues in one comprehensive hearing, it elected in the exercise of a sound discretion (influenced, no doubt, by the Railroad's objections to the production of records pertaining to the secondary steps, Appendix A) to try the case in logical steps, *i. e.*, to ascertain first if the existing depots were in fact inadequate, and afterwards, if necessary, examine proposed new locations, types of stations, parking, access, cost and related factors, in order ultimately to determine whether the final balance lay in favor of carrier hardship or public convenience and necessity. The Commission announced its intended program in clear and unmistakable language. It adhered thereto consistently (Appendix E) as the public hearings progressed. Upon a record confined exclusively to evidence pertaining exclusively to the issue of adequacy, it weighed the conflicting and voluminous testimony and exhibits and closed the first chapter with a finding in favor of the City, promptly noting the need for and its intention of moving into the next and second phase, viz., the selection of an appropriate site for the relocation tentatively adjudged as necessary in the public interest. The record nowhere re-

flects the slightest objection from anyone as to procedure, in fact excerpts from the proceedings included in Appendix E demonstrate the promptness with which first one side, then the other, reminded its adversary and the Commission not to encroach upon the reserved issues. Faced with these facts the Court presumably felt that any order which disposed of but one of several issues was perforce interlocutory; that the order was currently unenforceable because the Railroad, even if willing to obey it, knew not where to go, what kind of depots to erect or how much to spend in the project; that in any event the Commission upon further hearing was at liberty to decide in keeping with *State ex rel. Railroad Com'rs* v. *Florida East Coast Railway Company*, 67 Fla. 83, 64 So. 443, that an appropriate location for new stations is not available, or too expensive, or at least costly enough to outweigh the public's stake in the transposition. If these were the reasons which prompted the Court's refusal to halt the Commission case at the half-way point, they are fundamentally sound and in accord with the overwhelming weight of judicial authority throughout the nation.

Finally, and tested by Petitioner's own citations, *Department of Banking* v. *Pink*, 317 U. S. 264, 63 S. Ct. 233, and *Market Street R. Co.* v. *Railroad Comm. of California*, 324 U. S. 548, 65 S. Ct. 770, 89 L. Ed. 1171, to which can be added *Heike* v. *United States*, 217 U. S. 423, 30 S. Ct. 539, 54 L. Ed. 821, and *Republic Natural Gas Co.* v. *Oklahoma*, 334 U. S. 62, 68 S. Ct. 972, 92 L. Ed. 1212, the exact character of the judgment of the Supreme Court of Florida emerges in unmistakable form. It does not dispose of the issues, terminate the litigation or afford the basis for execution to enforce what has been determined. It is not the final word of the highest court of the State or, in fact, any word except that Petitioner's complaint is premature. The

latter has, of course, the burden of affirmatively establishing this Court's jurisdiction. *Memphis Natural Gas Co.* v. *Beeler*, 315 U. S. 649, 62 S. Ct. 857, 86 L. Ed. 1090. The policy against premature constitutional adjudications demands that any doubts in maintaining this burden be resolved against jurisdiction. *Republic Natural Gas Co.* v. *Oklahoma, supra.* It is not met by a showing that the major issues in a case have been decided and only a few loose ends remain to be tied up, which is Petitioner's case in its most favorable light. The Republic Natural Gas case is controlling and indistinguishable.

All of the cases cited by Petitioner are plainly inapposite. In *Matlow* v. *Missouri*, 295 U. S. 97, 55 S. Ct. 661, 79 L. Ed. 1327, the Supreme Court of Missouri had *affirmed* a *final judgment* of the Circuit Court of the City of St. Louis. The order involved in *Cohen* v. *Beneficial Loan Corp.*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528, was deemed appealable because it finally disposed of a right not an ingredient of the cause of action and entirely independent of it. In this case the issues of adequacy and new location are inseparable, and to decide one without the other would be as meaningless as the resolution to move home or business without heed to the cost or availability of a new location, indeed the Commission's remaining responsibility is equal to, if not perhaps even greater than, that which it has thus far discharged, requiring as it does, delicate adjustment between cost to the railroad and convenience to the public. *Stack* v. *Boyle*, 342 U. S. 1, 72 S. Ct. 1, 96 L. Ed. 3, reflects a necessary exception to the general rule, it being an application for bail in which relief to be effective had to be speedy. In *Swift & Co.* v. *Compania Colombiana*, 339 U. S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, the Court was confronted with an order dissolving an attachment on a boat, a

purely collateral issue and one which, if not immediately reviewed, would result in the release of the boat with only a theoretical possibility of restoring the attachment. *Roberts* v. *United States District Court*, 339 U. S. 844, 70 S. Ct. 954, 94 L. Ed. 1326, decided only that the denial by a District Judge of a motion to proceed *in forma pauperis* is an appealable order. *Department of Banking* v. *Pink, supra,* and *Market Street R. Co., supra,* hold against Petitioner and have already been discussed. In *Dickinson* v. *Petroleum Conv. Corp.*, 338 U. S. 507, 70 S. Ct. 322, 94 L. Ed. 299, the decree appealed from dismissed Petroleum's claims to certain property, thereby finally and conclusively destroying its asserted rights, hence the mere fact that the Court retained the case to decide who among the other parties should have the property did not alter the finality of the judgment as to Petroleum. In this case the claims of the Railroad are as much alive, so far as the Supreme Court of Florida is concerned, as they ever were. *Trustees* v. *Greenough*, 105 U. S. 527, 26 L. Ed. 1157, like *Cohen* v. *Beneficial Loan Corp., supra,* and *Swift & Co.* v. *Compania Columbiana, supra,* had to do with a collateral inquiry, distinct and independent in character from the case as a whole. Of *Carondelet Canal & Nav. Co.* v. *Louisiana*, 233 U. S. 362, 34 S. Ct. 627, 58 L. Ed. 1001, it seems enough to say that this Court in drawing the line between judgments final and judgments not final, placed Carondelet within the jurisdictional sphere and a commission case like this, where "the fate of the whole litigation may well be affected by the fate of the unresolved contingencies," outside of it. In *Hill* v. *Chicago and E. R. Co.*, 140 U. S. 52, 35 L. Ed. 331, the decree disposed of every matter of contention between the parties except one item, which was severable from the other subjects of controversy and did not affect their determination. And to the individual dif-

ferences of each case cited by Petitioner can be added a further distinction common to all, namely, that in every one of them the court which rendered the judgment actually heard, considered and on the merits rejected the contentions of the appealing party. Here the highest court of the State has merely pronounced the Railroad's claims premature, which in necessary effect is an invitation to their renewal at a later and appropriate occasion.

Petitioner's fear of penalties is wholly without substance. No action has been taken to inflict such sanctions; none is even threatened. Moreover, in Florida disobedience to an order of the Commission does not automatically result in liability for a penalty, which becomes effectual only through suit in which the Railroad may offer any valid defense, including the violation of constitutional rights. Section 350.28, Florida Statutes; *Atlantic Coast Line R. Co.* v. *State*, 94 Fla. 120, 114 So. 456. Respondents know full well that they cannot, after successfully contending before the State Supreme Court that this order is not final, claim that it is final for the purpose of enforcing a penalty. It is to be presumed that the Commission and the Florida Supreme Court will be equally consistent. Petitioner is the self-same litigant who established the embryonic character of a Commission order penalty-wise. *Atlantic Coast Line R. Co.* v. *State*, 94 Fla. 120, 144 So. 456. Its professed cause for alarm is difficult to understand.

Petitioner's final point, and the one upon which it most insists, concerns *City of St. Petersburg* v. *Atlantic Coast Line Railroad Company*, C. C. A. 5th, 132 F. 2d 675. This was an action in ejectment to establish title to and recover possession of the land upon which the freight station is located. It did not involve the passenger depot, which is five to six blocks away, and the only question ad-

judicated was whether the City, by repealing an ancient ordinance granting the Railroad the right to use the land for depot purposes, could deprive the Railroad of substantial investments made upon the strength of the original ordinance. Respondents have no quarrel with this case, concede that it was rightly decided, and disclaim (R. 1238) either the right or the intention of disturbing the Railroad's ownership of the land and existing facilities. Whether the judgment amounts to a perpetual license against regulation of the depots by a State agency in the exercise of its police power over a matter of purely local concern, no matter how obsolete, inadequate or obnoxious to the public interest they may become, is a question not decided by the Federal courts in the former litigation and are quite outside the scope of the issues or of its jurisdiction. For present purposes it is enough to know that the point remains unsettled in the present case and may be renewed upon the Railroad's appeal from the final order of the Commission. At that time, and with the aid of the evidence to be submitted at the next hearing, the Supreme Court can also compare present operating costs against those incurred at the new sites, study the value of the existing lands and buildings if retained by the Railroad for further use or if sold or leased for private purposes, explore the proposition that any loss resulting from an order to relocate is normally considered *damnum absque injuria*, *Railroad Commission of Alabama* v. *Northern Alabama Ry. Co.*, 182 Ala. 357, 62 So. 749; *Commercial Club of St. James* v. *Chicago, St. P., M. & O. Ry. Co.*, 142 Minn. 169, 171 N. W. 312, and *Atchison, T. & S. F. Ry. Co.* v. *Railroad Commission of California*, 209 Cal. 460, 288 Pac. 775, and from the overall and final picture, intelligently decide whether the Railroad has in fact lost anything for which the law affords compensation. From the judiciary's standpoint, the meaning and effect of *City of St. Petersburg* v.

*Atlantic Coast Line Railroad Company, supra,* are matters affecting the merits, some day to be decided, but not yet ripe for actual adjudication.

## CONCLUSION.

The conclusion expressed in the petition (page 11):

> "and the Supreme Court of Florida declining to interfere because forsooth in its view the Florida Commission's order is not final under the Florida practice: it is suggested that this Court well might say now instead of later that it will not permit a judgment and opinion of a court of the nation to be so ignored."

confesses candidly that the Supreme Court of Florida declined to act because in its judgment the order of the Commission was not a final order within the Court's jurisdiction to review. In the face of this admission, the Railroad's petition for certiorari amounts only to an invitation for this Court to interfere with an administrative proceeding at an intermediate stage and in advance of the State Supreme Court's final word on the subject.

The correct conclusion, Respondents submit, is that the Supreme Court of Florida very properly decided that it had neither power nor discretion to supervise step by step the deliberations of the Railroad Commission and that in any event the judgment of the Supreme Court is neither in form nor effect a final judgment within proper concepts of 28 U. S. Code, Sec. 1257(3).

Respectfully submitted,

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## APPENDIX A.

BEFORE THE FLORIDA RAILROAD AND PUBLIC UTILITIES COMMISSION.

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|---|---|
| CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, Petitioner, vs. ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Respondent. | **Docket No. 4063-RR Order No. 2199** |

Chairman Wilbur C. King, Commissioner Jerry W. Carter, and Commissioner Richard A. Mack each participated in the hearings and disposition of this cause.

**Order of the Commission.**

This matter came on to be considered by the Commission as the result of a formal petition by the City of St. Petersburg, Florida, a municipal corporation, for relocation of the St. Petersburg freight and passenger depots of the Atlantic Coast Line Railroad Company.

The city's petition was filed with the Commission on April 7, 1954, and in substance alleged that the St. Petersburg passenger station of the Atlantic Coast Line Railroad is old, unsightly, obsolete, poorly arranged and no longer

adequate from the standpoint of the convenience and necessities of the traveling public; that the passenger station situated only one block south of Central Avenue, which is the main thoroughfare of St. Petersburg, has become the source of serious traffic congestion in downtown St. Petersburg; that the congested conditions in the vicinity of the passenger station resulting from its location in the heart of the city's business section, and the inadequate parking facilities provided for those having business with the railroad, have conspired to make the railroad's passenger station grossly inaccessible for the traveling public and others having legitimate business on the station premises; that the frequent movement of trains to and from the passenger station across heavily traveled streets in the main business section of the city causes serious traffic congestion, prevents the free flow of traffic, subjects the public to undue hazards, and constitutes a serious and continuing threat to the public safety and welfare of the city, its inhabitants and visitors by impeding the free and effective movement of fire, police and ambulance traffic; that the railroad's freight station, also in the heart of St. Petersburg's business district, is inadequate in size, location and accessibility and constitutes a menace to the public safety and welfare; that said freight station because of its location and arrangement constantly causes serious traffic congestion on heavily traveled public streets in the vicinity of said station; and that said passenger and freight depots should be relocated to sites not inimical to the public welfare and safety and in keeping with the public convenience and necessity.

Under its rules of practice the Commission served a copy of the city's petition on the respondent railroad and directed it to satisfy the complaint or plead thereto within fifteen days from the date of such notice.

Before the respondent railroad filed its response to the city's petition, the city filed a petition to take deposition by written and oral interrogatories. By this petition the city sought authority to take the deposition of the Atlantic Coast Line Railroad before a notary public in Wilmington, N. C., where the home office of respondent railroad is located. The petition averred that the deposition would be taken for the purpose of eliciting evidence material and relevant to the issues in this proceeding. Ninety-seven written interrogatories were proposed in the petition and authority was sought to propound oral interrogatories in addition thereto.

Subsequent to the filing of the foregoing pleadings the railroad filed a motion to strike an allegation of paragraph 11 of the city's petition for relocation of the depots and also filed its answer to said petition. The City then filed a motion for more definite statement relating to the allegations of the Railroad's answer as to jurisdiction of the Commission and filed a motion to strike portions of the answer.

The Commission served notice on the Railroad of the petition to take deposition and directed it to show cause on June 1, 1954, at the Commission Offices in Tallahassee, Florida, why the Commission should not enter an order authorizing the taking of such deposition. Notice was also served on the parties to this proceeding of hearing on June 1 before the Commission at Tallahassee, Florida on the motions of both parties to strike and the City's motion for more definite statement. The Railroad then filed a motion to quash the notice and order of the Commission on the petition for deposition and the Commission notified the parties that such motion would also be heard on June 1. The railroad then filed a motion for continuance of the June 1 hearing and the Commission notified the parties

that it would on June 1 hear oral argument on the railroad's motion for continuance and all other pending motions then filed or which might be filed prior to the time of hearing. Subsequent to this notice, the Railroad filed a motion to quash and objections to the petition to take deposition by oral and written interrogatories.

After due consideration of the pending pleadings the Commission denied the city's motion for a more definite statement, its motion to strike portions of respondent's answer, and the railroad's motion to strike portions of the city's petition for relocation of respondent's freight and passenger stations. At the same time the Commission designated one of its members to hold a pre-hearing conference in St. Petersburg for the purpose of determining which of the proposed interrogatories should be answered by respondent and directed that said commissioner hold a hearing thereafter in Wilmington, N. C., for the purpose of receiving the railroad's answers to those interrogatories which might be approved by the Commission.

On July 8, 1954, the Commissioner designated for that purpose held the pre-hearing conference as directed for the purpose of determining which of the city's interrogatories should be answered. At said conference the respondent railroad objected to answering any of said interrogatories. Thereupon the petitioner discussed the individual questions by groups. The first group of questions related to the adequacy of the present stations. The second group related to the cost of the present operations of the Railroad Company in comparison to the cost of operation in the event the freight and passenger stations were relocated. The third group of questions related to the location of the present stations as they affect traffic in and about said stations and their effect upon the growth of St.

Petersburg's downtown business district. The last group of questions related to the convenience of the public. After the petitioner had advanced various reasons why the railroad should be required to answer the individual questions in each category, the Respondent raised specific objections to each individual question in each classification.

The parties supported their respective positions by the expert testimony of well-qualified engineers.

After having heard argument concerning the various interrogatories and being fully advised of the vast scope of the various questions involved, it was the opinion of the Commissioner designated to hold said prehearing conference that the interrogatories at that present time were premature and that the City of St. Petersburg should be required first to submit evidence at a public hearing in support of its petition for relocation of the freight and passenger stations of Atlantic Coast Line Railroad Company at St. Petersburg, Florida.

The full commission concurred in the findings and opinion of the Commissioner who held the conference and entered a formal order setting the matter down for a public hearing on the city's petition for relocation of respondent's freight and passenger stations. The public hearing was scheduled to be heard in St. Petersburg on October 5, 1954. When said hearing was convened the commission announced that two primary questions were involved, to wit: (1) Should the present freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg be relocated and replaced at a new location by new, modern and adequate facilities capable of fully meeting the public convenience and necessity, and (2) Where should such new facilities be located. By Order of the commission the October hearing was limited to the first ques-

tion. At the same time the commission announced that a determination of the second question would be the subject matter of further hearings if the commission should enter an affirmative order concerning the first questions.

Voluminous testimony and exhibits were received at the October hearing from the petitioner. A subsequent hearing was held in December, 1954, at which time the respondent railroad presented its testimony and exhibits in support of its opposition to the city's relocation petition. A third hearing was held in March, 1955, for the purpose of receiving rebuttal evidence from the petitioner. At the conclusion of this hearing the Commission requested the respective parties to file briefs, together with proposed findings of fact and conclusions of law, and announced that it would subsequently set a date for oral argument on the various issues involved.

Before briefs were filed and oral arguments heard the respondent railroad filed a motion to dismiss the proceeding on the ground that it had been rendered moot by the action of the city in adopting an Ordinance requiring the railroad to elevate its tracks from 16th Street North to Bayshore Drive. The city filed an answer to respondent's motion and the commission advised the parties that oral argument would be heard on the motion on June 8, 1955, at which time oral arguments on the merits of the city's relocation petition would likewise be heard. Briefs were filed on June 6 and oral arguments were heard by the full commission on June 8 as scheduled.

After a careful study and consideration of the entire record herein, and based thereon, the commission makes the following findings of fact:

1. In the year A. D. 1887 or 1888, Orange Belt Company constructed a railroad from Sanford, Florida, to St.

Petersburg, Florida, and built a depot on the present site of the existing passenger station, at which time St. Petersburg was a village of about 30 inhabitants. The village grew into a City of 7,186 inhabitants by 1915, when the present passenger depot was constructed.

2. The Atlantic Coast Line Railroad tracks enter the City at 40th Avenue North at approximately 35th Street and run in a Southeasterly direction, crossing Central Avenue between 13th and 14th Streets, proceeds one block, then turns Eastward and continues to Tampa Bay. From the point where it intersects the City limit to Tampa Bay, it crosses practically all of the heavily traveled streets and avenues of the City at grade. After crossing 13th Avenue North to the end of the line it traverses the main business district of St. Petersburg. From 7th Street Eastward to 3rd Street, the railroad tracks are in the center of First Avenue South, thereby creating a divided street for the passage of motor vehicles. From 7th Street Westward to Central Avenue and from 3rd Street Eastward to the Bay, the tracks occupy the entire street and the same is not open to vehicular traffic.

3. Central Avenue is the main arterial highway of the City of St. Petersburg running from Tampa Bay on the East to Boca Ciega Bay on the West. The Atlantic Coast Line Railroad depot is situated almost a block south of Central Avenue between 2nd Street and 3rd Street, both of which are heavily traveled streets of the City. The Railroad tracks are on the South side of the depot. Both 2nd Street and 3rd Street are paved a width of 60 feet. First Alley South is also paved. There is an open space between the South margin of First Alley South and the North wall of the depot with the exception of a masonry island on the West end of this area used for the discharge of passengers from taxicabs and a grassed lawn

surrounded by masonry work on the East end of this area. The entrance to the white waiting room is on the North side of the depot and from the South side of First Alley South to the entrance to the white waiting room is 71 feet 8 inches. First Alley South is 20 feet wide. The block between First Alley South and Central Avenue is designated as Block 32 and is built solid with stores from 2nd Street to 3rd Street, the rear end of which abut on First Alley South. The service entrances of these stores are on First Alley South which is used by commercial vehicles practically all of the time. On the 3rd Street side of the station building spaces are provided for the parking of vehicles along the island. At the West end of the area spaces are marked for the use of taxicabs. Along the North side of the building 17 spaces are provided for the parking of automobiles for the convenience of the public who have business to transact at the railroad station. On the 2nd Street side of the building are 5 or 6 spaces provided for parking automobiles but are used in the main by American Railway Express Company for its trucks. North of the grassed lawn surrounded by masonry work at the East end of the building is situated the office and warehouse of American Railway Express Company. From the North border of this grassed lawn to the South wall of the Railway Company is a distance of 40 feet. Between the grassed lawn and the depot is a driveway 26 feet wide but which is usually blocked with the trucks of the Express Company. The Express Company also has a service station at the East end of the depot. West of this service station is the white waiting room. Immediately West of the white waiting room is the ticket office and station agent's office. West of the ticket office is the colored waiting room. West of the colored waiting room is a covered patio. Immediately West of the patio is the baggage room and parcel check office. There is a covered walk on the South side

of the depot which extends almost but not quite to the railroad tracks. This shelter extends almost the entire distance from 2nd Street to 3rd Street. Under this shelter, in front of the South door to the white waiting room, is a sign directing passengers to board trains East of 2nd Street. The building was erected in 1915. It is far from modern but is large enough in the main to accommodate the normal requirements of the traveling public and others having business at the station, although the waiting rooms are small without sufficient seating capacity for the convenience of the passengers and those who go to the depot to see them aboard and those who go there to meet passengers on incoming trains. The toilet facilities are insufficient and unsanitary.

The baggage room in the station is poorly located and difficult of access. It can be reached by car, truck or taxicab only through an alley 26 feet wide which runs Eastward from 3rd Street. Automobiles are usually parked adjacent to this narrow passage which makes an entrance to the baggage room by automobiles difficult.

4. To reach the door of the white waiting room by motor car it is necessary to enter the areaway between First Alley South and the depot building either from 2nd Street or 3rd Street and this areaway is invariably congested with motor vehicles, particularly during the arrival and departure of trains. Seldom, if ever, is there one of the parking spaces, provided for the public, vacant for the use of passengers and those who go to the depot to transact business. It is almost impossible to find a vacant parking space within two or three blocks of the passenger depot and large numbers of people who go to the depot to board trains are compelled to double park in either 2nd or 3rd Street because of the congested condition of First Alley South and the small areaway North of the station, unload

their baggage and take their motor vehicle two or three blocks to park the same.

5. The railroad yards of the Atlantic Coast Line are situated North of 13th Avenue North and West of 19th Street. All trains are made up for departure in the yards and are backed from the yards to the station across the mostly heavily traveled streets of the City and through the business district. During the winter months a train called the Havana Special arrives in St. Petersburg about 7:50 A. M., unloads at the depot and backs out to the yards. About 9:00 A. M. a train designated as the Champion, consisting of 16 to 18 units, backs from the yards to the depot to be loaded for departure at about 10:30 A. M. This train invariably is placed on the first track South of the depot, that is next to the Station. While this train is waiting for departure time invariably another train of 8 to 10 units, called the Southland, arrives on the tracks next to the train made up for departure, leaving very narrow space between the two trains for the passengers to detrain and for the unloading of baggage. There is no platform for the convenience of the passengers getting off between these two trains but merely an asphalt like substance on the ground. Nor is there any canopy or shelter provided for the convenience of passengers in inclement weather. Passengers alighting from the Southland cannot go directly to the depot, but are compelled to go either West to 3rd Street and around the locomotive or Eastward to 2nd Street and around the broken end of the train waiting for departure, in order to reach the depot. Not infrequently the passengers are compelled to debouch into the street subjecting them to injury from traveling vehicles.

Passengers leaving on outgoing trains, in obedience to the sign directing them to go East of 2nd Street, cross 2nd Street and proceed toward 1st Street and sometimes

cross 1st Street and go almost to Shore Drive, depending upon the particular pullman car to which the passenger is assigned. East of 2nd Street there is no platform provided for the convenience of passengers but only a narrow asphalt like pavement laid flush with the ground which extends only part of the way. There is no shelter or canopy of any kind East of 2nd Street for the protection of the passengers in inclement weather.

After the Southland arrives and the passengers detrain, the Champion departs, traversing the business district and crossing the most heavily traveled streets in the City, bypassing the railroad yards on its way to Jacksonville and points North. When the Southland unloads its baggage, mail and express cars, it backs out to the yards over the same route. About 3:30 in the afternoon the Havana Special backs from the yards over the same route for loading for departure at 7:30 P. M. and soon thereafter the Southland also backs from the yards to the station to be loaded for departure at 6:00 P. M. While the Southland is standing at the station, waiting for the time of departure, invariably the West Coast Champion arrives compelling the passengers to detrain between the Southland and the Champion. After the Champion unloads its mail, baggage, and express cars it backs to the yards and then the Southland departs at approximately 6:00 P. M. About 7:00 P. M. the Havana Special leaves over the same route.

6. All these trains, whether backing to the station for departure or arriving block 3rd Street, 2nd Street, 1st Street and most of the time Shore Drive. Incoming trains usually clear 3rd Street, which they block only long enough for the passage of the train, but by that time the locomotive is down between 1st and 2nd Streets, or between 1st Street and Shore Drive, depending upon

the length of the train. In the winter season, trains with 15 or 16 cars entirely block 2nd Street and 1st Street until the passengers are unloaded from the cars, which takes generally from 6 to 10 minutes. During that time the train crew detaches the mail and express cars, pulls them down across 1st Street and back into the stub and track which is on the North side of the main tracks between 1st and 2nd Streets. This switching movement also blocks 1st Street for a period of time. The engine then goes back and attaches to the remaining cars parked East of 1st Street, and then returns and connects up with the cars still standing in front of the station. Usually there is a dining car which occupies the second from the end position in the train near 3rd Street. The entire train is then pulled back down Eastward blocking 1st Street again. The dining car is brought back Westward and attached to the Southland which is ready for departure. Then the whole train is pulled down again blocking 2nd Street for 6 or 7 minutes and then carried to the yard. The whole operation occupies 45 or 60 minutes or more, during which time one or more of the streets mentioned are blocked by train movements. Located as the station is it is impossible to switch the incoming or outgoing trains without blocking either Shore Drive, 1st, 2nd, or 3rd Streets. In effect the whole area of St. Petersburg from 3rd Street Eastward is used by the Atlantic Coast Line Railroad Company as a train switching yard. On occasion, cars are left blocking the streets for as much as 96 minutes. The blocking occurs because it is impossible to clear the engine on 3rd Street and leave 2nd Street unblocked and sometimes 1st Street. Because 1st Avenue South is not open East of 3rd Street and 2nd and 3rd Streets are blocked by the movement of the trains the vehicular traffic cuts through First Alley South and the area between the margin of First Alley South

and the depot, thereby causing terrific traffic congestion in both the alley and in front of the depot; and thus making the depot inaccessible to those desiring to go there to transact business with the railroad company or those who go there to depart on trains or to meet passengers arriving on trains.

This blocking of the streets by the switching movements of the train interferes greatly with the flow of vehicular traffic during the busy time of each day.

7. At the time the depot was constructed in 1915 at its present location the City had a population of only 7,186 and there were few automobiles in use. St. Petersburg has grown rapidly and now has a population of approximately 125,000. The increased use of motor vehicles by the local population together with that of the visitors from other states has created a serious traffic problem in the vicinity of the depot and all streets crossed by the rails.

In 1915 when the station was constructed the total number of winter visitors approximated 23,000. In 1954 there were approximately 534,000 winter visitors. In 1915 approximately 17,000 of them came by train. In 1954 approximately 84,000 of them came by train.

8. The main fire station of the City is located on 3rd Street South one block South of the depot, and it is a frequent occurrence that fire alarms are turned in when the trains block 3rd Street, 2nd Street, 1st Street and Shore Drive, compelling the fire equipment to detour in order to answer the alarm. It frequently happens that the blocking of these streets backs the traffic up beyond Central Avenue to the North and 2nd Avenue to the South and across the intersections thus blocking the East and West flow of traffic on Central Avenue at the intersections.

9. The station located as it is, under the conditions which exist, is insufficient to meet the requirements of the traveling public and does not provide the necessities or convenience which the traveling public requires.

10. In 1904 the City of St. Petersburg vacated that portion of 8th Street South extending from the South margin of First Alley South to the railroad tracks of the Atlantic Coast Line Railroad Company, and conveyed the same to said railroad company for freight depot purposes. The railroad built a freight depot on First Alley South and across the vacated portion of 8th Street just one-half block South of Central Avenue. At that time the City of St. Petersburg had a population under 2,500. As the result of the construction of said depot 8th Street South comes to a dead end at the South margin of First Alley South. There is no access to the freight station from the South. It can be reached only by driving off Central Avenue down 8th Street South or by traversing an alley one-half block South of and parallel to Central Avenue. The entrance to the alley is from 7th Street. It is narrow and has commercial cars and trucks parked along the same. 7th Street and Central Avenue are both heavily traveled and it is difficult to turn into the alley to gain access to the freight station. Exit from the alley is possible only by making a complete U turn at the station and proceeding North on 8th Street to Central Avenue, or by going Westward down the alley into 9th Street. Traffic on both Central Avenue and 9th Street is so heavy it is difficult and often unsafe to leave the alley and merge with the traffic on either street and is oft-times dangerous.

The switches connecting the main line to the tracks serving this station are on 7th Street South on the East

end, and 9th Street South on the West end, so that every train movement has to block either 9th or 7th Street with the possible exception of an engine pulling one car.

As a result of its inaccessibility and the switching movements of the freight trains, the freight depot cannot and does not provide the convenience and necessity required by the city of 125,000 people, which St. Petersburg has grown. The City is still growing rapidly and the condition which exists now will grow tremendously worse as the City continues to grow.

11. An average of 147,845 motor vehicles cross the tracks of the Atlantic Coast Line Railroad Company from and including 13th Avenue North Southeastward and Eastward to the Bay daily. There is an average of 387 daily train movements over these same crossings, causing 4,470 motor vehicles to be delayed at said crossings daily. The total time occupied by trains at these crossings daily are 7 hours and 44 minutes and each crossing, on the average, is occupied by trains 27 minutes and 18 seconds daily. The traffic signals in St. Petersburg are so regulated as to provide the maximum continuous flow of traffic. When the crossings are blocked by trains the flow of traffic is halted causing it to back up several blocks and thereby blocking the traffic on the cross streets.

12. The locations of the freight and passenger depots together with the location of the tracks serving the same greatly retard the expansion of the business district of St. Petersburg and vitally and adversely depreciates the values of property in the proximity of the railroad station and the railroad tracks.

Based upon the record herein, and the laws of Florida applicable thereto, the commission has arrived at and announces the following conclusions of law:

1st. The Atlantic Coast Line Railroad passenger depot is grossly inadequate and incapable of providing the public convenience and necessity required by the traveling public.

2nd. The Atlantic Coast Line Railroad freight depot is grossly inadequate and fails to provide the public convenience and necessity required by those who ship and receive freight through said depot.

3rd. That both the passenger and freight depots should be relocated so as to better serve the inhabitants of the City of St. Petersburg to which said railroad company is tributary.

4th. The motion to dismiss filed by respondent and based upon the City Ordinance requiring elevation of the railroad's tracks should be denied.

Now, Therefore, in Consideration Thereof, it is Ordered by The Florida Railroad and Public Utilities Commission that the respondent, Atlantic Coast Line Railroad Company, be and it is hereby directed to remove its St. Petersburg, Florida, freight and passenger depots from their present locations in said city and to construct and operate new, modern and adequate freight and passenger depots, capable of fully meeting the convenience and necessities of the public, at such location or locations in said city consistent with the public interest, safety and welfare, as may be determined and directed by this Commission pursuant to a further hearing to be held herein at a time and place subsequently to be announced by the Commission.

By Order of the Commission at Tallahassee, Florida, this 30th day of June, A. D. 1955.

/s/ Bolling C. Stanly,
Executive Secretary.

(Seal)

LWP

## APPENDIX B.

IN THE SUPREME COURT OF FLORIDA.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Petitioner,

vs.

WILBUR C. KING, Chairman, and JERRY W. CARTER and ALAN S. BOYD, Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, Respondents.

**Motion to Quash Petition for Certiorari and to Dismiss Proceedings.**

Comes now City of St. Petersburg, Florida, a municipal corporation, one of the respondents in the above stated cause, by its undersigned solicitors, and moves the Court to quash the petition for Writ of Certiorari filed by petitioner, Atlantic Coast Line Railroad Company, a corporation, and to dismiss the proceedings filed in this Honorable Court, upon the following grounds:

1. Because the petition for Writ of Certiorari was prematurely filed.

2. Because the order entered by the Florida Railroad & Public Utilities Commission on June 30, 1955, which petitioner seeks to have this Court review, does not possess

that element of finality which is a prerequisite to judicial review.

s/ Erle B. Askew,
Hall Building
St. Petersburg, Florida,

s/ S. E. Simmons
Florida National Bank Building,
St. Petersburg, Florida,

s/ Carroll R. Runyon,
Florida Theatre Building,
St. Petersburg, Florida,

Solicitors for Respondent City of St. Petersburg, Florida.

We, the undersigned counsel for petitioner in the above stated cause, do acknowledge that we have this day received a copy of the Motion to Quash the Petition for Certiorari and to dismiss the proceedings in the Supreme Court of Florida, this ..... day of ....., 1955.

.....,

For Mann, Harrison, Stone, Roney & Mann,
Attorneys for Atlantic Coast Line Railroad Company.

## APPENDIX C.

IN THE SUPREME COURT OF FLORIDA.

JUNE TERM, A. D. 1955.

TUESDAY, OCTOBER 11, 1955.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Petitioner,

vs.

WILBUR C. KING, Chairman, and JERRY W. CARTER, and ALAN S. BOYD, Members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, Respondents.

The City of St. Petersburg and Wilbur C. King, Chairman, and Jerry W. Carter and Alan S. Boyd, Members of the Florida Railroad and Public Utilities Commission, Respondents, have filed motions to quash the Petition for Certiorari filed in this cause on August 26th, 1955, and to dismiss the proceedings and upon consideration thereof, it is ordered that said motions be and the same are hereby granted and said Petition for Writ of Certiorari is hereby quashed and proceedings dismissed.

A True Copy.

Test:

Guyte P. McCord,
Clerk Supreme Court.
(Seal)

## APPENDIX D.

IN THE SUPREME COURT OF FLORIDA.

JUNE TERM, A. D. 1955.

FRIDAY, NOVEMBER 18, 1955.

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Petitioner,

vs.

WILBUR C. KING, Chairman, and JERRY W. CARTER and ALAN S. BOYD, Members, of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a Municipal Corporation, Respondents.

Petitioner has filed a petition for rehearing in this cause and upon consideration thereof, it is ordered that said petition be and the same is hereby denied.

The Petitioner in said petition prayed in the alternative staying further proceedings in the cause by the Respondents so that Petitioner may apply for and obtain, if it can, a Writ of Certiorari from the Supreme Court of the United States and upon consideration thereof, it is ordered that further proceedings in this cause be and are hereby stayed for ninety days from this date to enable the Petitioner to have a reasonable time in which to apply for and to obtain, if it can, a Writ of Certiorari to the Supreme Court of the United States. This order is subject to cancellation at any time if the Appellant fails to prosecute certiorari proceedings with reasonable dispatch.

A true Copy.

Test:

/s/ Guyte P. McCord,
Clerk Supreme Court.

(Seal)

## APPENDIX E.

### Material Excerpts from Public Hearings.

R. 114-115:

Q. I mean to say, if you, as an engineer, were requested to make a location for a passenger station in St. Petersburg or any other City, is the question of highway interference one that you would consider important in reaching a determination?

Mr. Harrison: May it please the Commission, we are not confronted here with the question of establishing a new station at a new location. We are talking about the present station and the question of inadequacy of that station and not about highway interference.

Mr. Simmons: May it please the Commission, that seems rank quibbling. The witness is trying to deal with the question of whether these stations are properly located and he will do so.

Chairman Carter: The objection will be sustained.

Mr. Simmons: Did I understand you to say that the objection is sustained?

Chairman Carter: Yes.

* * * * *

R. 128-131:

Q. Mr. Kennedy, has your opinion been influenced to any extent by the fact that St. Petersburg is at the end of the line?

A. Yes, it has because one of the elements which necessarily tends to keep a railroad in the location it is in is the fact that it is going on to serve some other locality.

If this Atlantic Coast Line track were going through St. Petersburg on to Miami or Sarasota or some other point beyond that would have to be very heavily weighed and you would have to consider the question of what other location you could make and whether or not the railroad could reasonably afford to do it and whether anyone but the City could be expected to make the expenditure for them. Here it makes no difference whether the termination is at Bayshore Drive or 13th Avenue North or somewhere else. The change could be made with a minimum expenditure as far as operation is concerned I am sure it would be a more economical operation if it did terminate out at 13th Avenue North or some such location. It would eliminate a good deal of switching crew time and switching time and I think it would be to the benefit of the railroad as well as the public interest.

Mr. Harrison: I move to strike the last portion of the witness' statement that in any respect refers to the matter of economy of operation or to advantages, possible advantages to the railroad on the ground that there is no evi dence before the Commission upon which an expert opinion such as he seeks to give could be based.

Mr. Simmons: Of course, one reason why the evidence is not here is because the Railroad resisted every attempt we made to get such information.

Mr. Harrison: The fact remains that there is no evidence here regardless of the manner in which it is absent.

By Mr. Simmons:

Q. Mr. Kennedy, to go further along on this, to throw further light on this, would these observations which you make with respect to economy of operation be based upon a wild guess or upon your experience in similar situations elsewhere?

Mr. Harrison: Pardon me, but my motion is still to strike the last portion of the answer and I would like a ruling at this time.

Mr. Simmons: I think if the Commission lets the witness answer this question it will make the motion immaterial. It is given based on experience he gained elsewhere.

Mr. Harrison: My motion was made. I wish to have a ruling on it.

Mr. Petteway: Read Mr. Kennedy's statement.

(The statement was read by the Reporter.)

Mr. Petteway: It seems to me that it is not related to the adequacy of the present station so much as it refers to the economical operation of the new station. I think the objection is well founded.

Chairman Carter: Did you ever operate a railroad under such circumstances in which those conditions did exist?

The Witness: No, sir.

Chairman Carter: The objection will be sustained.

* * * * *

R. 171-173:

Q. Do you know any locality south of 13th Street and east of 16th Street that could be used as a depot site that would eliminate the conditions to which you have testified?

Mr. Harrison: Objected to on the ground that it has heretofore been determined that moving to a new site is not an issue at this time.

Chairman Carter: Would you read that question?

(The question was read by the Reporter.)

Mr. Askew: We have set up in our petition certain conditions that exist over these particular streets.

Chairman Carter: You asked him if he knows of any site in his opinion.

Mr. Askew: As a traffic expert and from his observation, does he know of any site that would do away with the hazardous conditions that he has testified to.

Mr. Howell: I submit, may it please the Chairman, that that point can be reached without violation of the previous ruling of your honor to the effect that we are not concerned with the possibility of a new location here. It is obvious and I am sure the Lieutenant would agree, that if the Railroad were not there, there would not be any need for any flash signal. You need not tie it to any particular point.

Mr. Askew: If the intention is to admit the hazardous condition, I won't pursue it any further.

Mr. Petteway: It seems to me that in the first place it is a rather broad question. There are hundreds of places that would not create the hazard and the objection is perfectly consistent with the one your Honor sustained yesterday to the same question.

Mr. Askew: May I be heard on that? I was going by the order entered by the Commission. It says, "After having heard argument concerning the various interrogatories and being fully advised of the vast scope of the various questions involved, it is the opinion of the Commissioner designated to hold the pre-hearing conference that the interrogatories at the present time are premature and that the Petitioner herein, the City of St. Petersburg, should be required first to submit evidence at a public hearing in support of its petition for relocation of the freight and passenger stations of the Atlantic Coast Line Railroad Company at St. Petersburg, Florida."

Our petition particularly refers to the hazardous conditions that are created at these street crossings. If the Commission is of the opinion that that question is premature, I will not insist on it at this time.

Chairman Carter: The objection will be sustained.

* * * * *

R. 509-510:

By Chairman Carter:

Q. From your experience, I understand you have conveyed to the Commission the idea that the convenience of the public would make it necessary for the passenger and freight station to be removed from its present location. Am I correct?

A. I think that would be the general opinion I would have. It would be of unquestionable benefit to the whole economy of the City.

Q. Have you given any thought to where the convenience of the public would be best served for this station if this is not the best place?

A. That is hard to answer.

Mr. Simmons: May it please the Commission, it is embarrassing to object to a question from the Commission but this has been divided into two different categories. First is whether the station is adequate or inadequate and assuming we get a yes answer to that, where should it be.

Chairman Carter: Your objection is well taken and will be sustained.

* * * * *

R. 937-938:

Q. You prefer this site over an outlying site where the Railroad itself would be relieved of traffic conditions?

Mr. Howell: May it please the Commission, I object to the question on the ground that it includes a hypothesis not involved in this matter. It is not involved in this case.

There has been no suggestion about another site and under the order issued in this case that point is irrelevant.

Mr. Simmons: I just asked him if he would prefer this location over an outlying location.

Mr. Petteway: He asked if he would rebuild at the present location and he said he would and it seems to me this is arguing that question with him.

Chairman Carter: The objection will be sustained.

FILED
FEB 29 1956
HAROLD B. WILLEY, Cl

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

**No. 669.**

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation,

*Petitioner*

*v.*

WILBUR C. KING, *et al.*, as members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,

*Respondents*

## PETITIONER'S REPLY TO RESPONDENTS' BRIEF.

CHARLES COOK HOWELL,
601 Atlantic National Bank Building,
Jacksonville 2, Florida,

BAYA M. HARRISON, JR.,
First National Bank Building,
St. Petersburg, Florida,

PHIL C. BEVERLY,
c/o Atlantic Coast Line Railroad Company,
Wilmington, North Carolina,

*Attorneys for Petitioner.*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1955

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ATLANTIC COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner

*v.*

WILBUR C. KING, *et al.*, as members of Florida Railroad and Public Utilities Commission, and CITY OF ST. PETERSBURG, FLORIDA, a municipal corporation,

Respondents

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## PETITIONER'S REPLY TO RESPONDENTS' BRIEF.

We have one short submission to make in reply to the respondents.

At the bottom of page 8 and at the top of page 9 of their brief, they say that the Florida Commission's order is not final because the prime question of cost is one still to be decided. But the cost they are talking about has nothing to do with the ordered removal of the depots. It relates directly and only to the cost and expense of constructing new depots on new sites according to new plans and specifications.

Respondents do not question our assertion that the order for the removal of the existing depots is a *fait accompli.*

If, however, respondents mean expense somehow referable to the removal of the depots, that question should have been determined before removal of the depots was required. It was an essential ingredient of the order. *Atlantic C. L. R. Co.* v. *Wharton*, 207 U. S. 328, 335 (1907).

*State of Washington* v. *Fairchild*, 224 U. S. 519, 533 (1911) disapproved an order of the State of Washington Railroad Commission, requiring trackage connections, because, for one thing, "there is nothing [in the record] by which to compare the advantage to the public with the expense to the defendant . . ."

And if respondents are nevertheless correct, their submission furnishes another reason why it was wrong for the Florida Commission to order the destruction of the Company's depots without paying any attention to the question of expense or cost.

Respectfully submitted,

CHARLES COOK HOWELL,
BAYA M. HARRISON, JR.,
PHIL C. BEVERLY

Attorneys for Petitioner.